AF/3752

Final

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Richard W. Parod et al.	)
Serial No.: 09/848,665	)
Filed: May 3, 2001	)
Group Art Unit: 3752	)
Examiner: Christopher S. Kim	)
For: MOBILE IRRIGATION MACHINE WITH UNDERGROUND WATER APPLICATION	)

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Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

Response to Examiner's Argument

In the Answer, the combination of Sesser 4,676,438 and Stoddart 632,795 is again relied upon under Section 103 as the sole basis for the rejection of claims 33, 36, 38, 39-45 and 50. In the Answer, the furrow irrigation system of Sesser is relied upon to teach the subject matter of claims 33 and 45 except for a structure which defines "a fluid passageway" through the structure

"for permitting water to flow" through the structure, as recited in claims 33 and 45. It is respectfully believed that this reliance is misplaced and that the apparent combination with Stoddart is contrary to the express teachings of both references and would destroy Stoddart's function.

The "furrows" of Sesser are relied upon in the Answer as disclosing the structure of a trough which is positioned relative to the ground. However, the "furrows" must be considered in the context of Sesser's disclosure and the entirety of the claim language. The furrows are clearly shown as ditches which are dug into the ground, thus defining a part of the ground's indulating surface. Indeed, the ground must also logically include the surface from which the plants grow or sprout. In contrast to the claims, the furrows are part of the ground's undulating surface and do not define a separate structure which is positioned at least partially above the ground. Also in contrast to the claims, Sesser's furrows do not define at least one wall adapted to engage a surface of the ground. The walls defining the furrow are surfaces of the ground itself and, thus, the ground cannot engage itself.

In the Answer, the argument that the "furrows" are separate from the ground further falls apart in the context of the specification and upon consideration of the term's meaning. It is stated in the Answer that the "furrows" define a structure which is positioned above the surface of the ground where the "furrows" are apparently defined as the portion of the soil above the wheel track. Under this scheme, a "furrow" would be defined by a mound of soil which is clearly contrary to the meaning of the term in Sesser's disclosure and is also contrary to any ordinary meaning of this term. Also, this meaning would exclude the portion of the soil from which the plants grow, as shown in Fig. 1, which is also contrary to a logical interpretation.

The Answer further attempts to associate Sesser's furrows with the claimed structures using dictionary definitions. Six different dictionary definitions are provided for "trough" and three different definitions are provided for "furrow." It is presumed in the Answer that these two terms are synonymous merely based on the inclusion of the phrase "narrow depression" in one of the definitions for each term without any consideration of the context of these terms. These terms cannot be singled out and compared in a vacuum. Rather, they must be read in the context of the claim as a whole and in the context of Sesser's disclosure. Sesser teaches and suggests direct application of water directly into the furrows which are part of the ground rather than any structures separate from the ground for receiving water, as in the claims.

As set forth in the Answer at page 6, lines 1-4, the Answer further improperly compares Sesser's "furrow" to the claimed "trough" in terms of features not recited in the claims, i.e., material. It is respectfully submitted that this comparison is also improper. Any comparison must be between the recited structure of the claims and the disclosure of Sesser.

Further, Applicant's claimed invention is improperly used as a blueprint to combine the liquid distributor of Stoddart '795 with the furrow irrigation system of Sesser '438. In the absence of Applicants' disclosure, such combination is not taught or suggested by the references. Any purported combination improperly relies on hindsight derived from the pending application. The alleged combination is made despite the contradictory teachings of these references which discourage any such combination and which render Stoddart's distributor inoperable for its purpose.

Sesser teaches application of water directly into the furrows or ground. No other type of water application is disclosed. In fact, Sesser discourages other types of water application which

subject the water to wasteful wind drift and evaporation and encourages water applications which reduce such waste. Sesser specifically teaches the advantage of reducing evaporation loss by application of "water directly into furrows" (see Col. 1, lines 35-45). The placement of Stoddart's distributor in Sesser's furrows irrigation system clearly would be an inefficient use of water. Stoddart's distributor would only irrigate crops if enough liquid was deposited to overflow the top of the distributor. The distributor must be fully filled before even one drop of water will flow over the top of the distributor to the ground. All standing liquid remaining in the distributor would be subject to evaporation and wind drift, in direct contradiction to Sesser's express teachings. Therefore, it would be illogical to place Stoddart's distributor in Sesser's irrigation system.

It is respectfully submitted that there are further reasons that warrant no combination of these structures. The structure, purpose and function of Stoddart's distributor is also undermined if the alleged combination is made. Stoddart's distributor teaches that surface tension allows the water to flow over the top and down the sides of the distributor to the pegs b where the surface tension creates fine streams of liquid. If Stoddart's distributor were placed in the furrows of Sesser's irrigation assembly, then obviously the ground or other structure would cover the pegs b and contact the sides of the distributor. The contact between the ground and the distributor breaks the surface tension of the water. Water no longer flows to the pegs b to create fine water streams and the pegs would serve no other purpose than to anchor the distributor in the ground. Water would merely slosh over the sides of Stoddart's distributor when the distributor is full. The placement of Stoddart's distributor in Sesser's furrow irrigation system would completely

frustrate the intended purpose of Stoddart's distributor and, thus, is contrary to the teachings of Stoddart.

It is respectfully submitted that it is only with the improper use of hindsight, employing the present application as a blueprint or road map to pick and choose among the cited references, that such a combination is even conceivable. As the Federal Circuit has made clear, however, obviousness cannot be based on combining isolated elements from various references where there is otherwise no teaching or suggestion of such a combination. For these reasons, applicants respectfully submit that Sesser '438 and Stoddart '795 are not properly combinable in the absence of the teaching supplied by applicants' specification.

Response to Examiner's Statement Regarding Status of Claims

The Examiner's Answer is consistent with Applicants' Appeal Brief except for dependent claims 37, 48 and 49 which depend from rejected independent claims 33 and 45. Although claims 37, 48 and 49 are withdrawn as directed to a non-elected invention, it is submitted that these claims should be rejoined under MPEP Section 809.04, upon allowance of their respective independent linking claims. Therefore, to this extent, these claims are believed to be affected by this appeal in addition to rejected claims 33, 36, 38-45 and 50.

Response to Examiner's Statement Regarding the Issues

In an effort to reduce the number of issues of this appeal, applicants hereby withdraw Issues G and H concerning claims 37, 48 and 49. However, it is respectfully submitted that these claims should be rejoined under MPEP Section 809.04, upon allowance of their respective independent claims.

The inclusion of issues and arguments for separately allowable claims 34, 35, 46 and 47 is respectfully believed to be proper and the reason for such inclusion is due to statements in the grounds for rejection which Applicants believe to be inconsistent with the allowance of these claims. It is noted that the Answer did not substantively address Applicants' arguments concerning the allowable claims.

Response to Examiner's Statement Regarding the Grouping of Claims

In accordance with the above, claims 37, 48 and 49, although currently withdrawn, should be rejoined upon allowance of independent claims 33 and 45. Applicants agree that the grouping of claims includes allowable claims 34, 35, 46 and 47 which should be considered as separately allowable from respective independent claims 33 and 45, and thus, should not stand or fall with their independent claims.

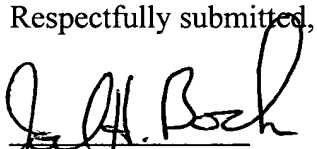
Response to Examiner's Statement Regarding the Claims Appealed

In the Appeal Brief, claim 46 inadvertently included both text previously shown in strikeout and underlining although the text was shown with such strikeout and underlining removed. This error led to an incorrect showing of claim 46. Applicants agree with rewritten claim 46 in the Answer.

Conclusion

It is respectfully submitted that claims 33 and 45 are patentable over the cited references and that the rejection should be reconsidered and withdrawn as to these claims and their respective dependent claims and should further be held allowable. Upon such allowance, independent claims 33 and 45 are generic or linking claims which permit withdrawn claims 37, 48 and 49 to be rejoined which is also respectfully requested.

Respectfully submitted,



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